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Attorneys for Plaintiff
THAT ONE VIDEO ENTERTAINMENT, LLC, a
California limited liability company

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

THAT ONE VIDEO
ENTERTAINMENT, LLC, a
California limited liability company,

Plaintiff,
vs.

KOIL CONTENT CREATION PTY
LTD., an Australian proprietary
limited company doing business as
NOPIXEL; MITCHELLE CLOUT,
an individual; and DOES 1-25,
inclusive,

Defendants.

CASE NO: 2:23-cv-02687 CAS (JCx)

[Assigned to the Hon. Stephen V. Wilson;
Ctrm 10A]

PLAINTIFF'S UNOPPOSED *EX PARTE*
APPLICATION FOR A BRIEF
CONTINUANCE OF THE TRIAL
CALENDAR; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF JOHN BEGAKIS IN
SUPPORT THEREOF

PLAINTIFF'S UNOPPOSED *EX PARTE* APPLICATION FOR A BRIEF
CONTINUANCE OF THE TRIAL CALENDAR

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Rule 16 of the Federal Rules of Civil Procedure (“FRCP”), Plaintiff THAT ONE VIDEO ENTERTAINMENT, LLC, a California limited liability company (“TOVE” or “Plaintiff”), by and through its counsel of record, hereby respectfully requests, via this *ex parte* application, that the Court briefly continue the Trial in this action, and all related deadlines, by no more than ninety (90) days (the “Application”).

This Application is made on the grounds that good cause exists to continue the Trial date, and all related deadlines, for two main reasons.

First, despite working diligently to conduct discovery since this matter became “at issue” less than two months ago, Defendants have still not produced the code base at issue in this dispute. TOVE has even retained an expert witness to review the code when produced. But since the deadline to disclose TOVE’s expert and produce their expert report has technically already passed because of the current trial date (even though the matter has been at issue for less than two months), TOVE is unable to designate its expert to provide an opinion on the similarity between Defendants’ code base and TOVE’s employee’s original contributions.

Second, Defendants’ counsel has indicated that Defendants intend to not produce the code base *at all* if this Application is unsuccessful because TOVE is now, and would continue to be, technically unable to designate an expert witness to review the code. This is a clear affront to TOVE’s constitutional right to a full and fair trial on the merits with respect to the primary issue in this case: whether Defendants’ code base is similar to TOVE’s employee’s original contributions. It will also necessitate a Motion to Compel from TOVE, which will just delay the trial schedule at that time.

In light of the fact that the deadline to designate TOVE’s expert and produce his report has already passed *even though Defendants have not yet produced the*

1 *code base in discovery*, and in light of the fact that *Defendants have indicated that*
 2 *they will completely withhold the code base if TOVE is unable to designate an*
 3 *expert*, extraordinary relief via this *ex parte* application is necessary.


4 On April 24, 2024, TOVE's counsel gave notice of this Application to
 5 counsel for Defendants KOIL CONTENT CREATION PTY LTD., an Australian
 6 proprietary limited company doing business as NOPIXEL, and MITCHELLE
 7 CLOUT, an individual (collectively, "Defendants"). Defendants' counsel indicated
 8 that he would not oppose this Application.

9 The Application is based on this Notice, the accompanying Memorandum of
 10 Points and Authorities, the Declaration of John Begakis filed herewith, all pleadings,
 11 files and records in this proceeding, all matters of which the Court may take judicial
 12 notice, and any arguments or evidence that may be presented to or considered by the
 13 Court prior to its ruling hereon.

14 DATED: April 24, 2024

ALTVIEW LAW GROUP, LLP

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16 By:

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 18 JOHN M. BEGAKIS
 SHEENA B. TEHRANI
 Attorneys for THAT ONE VIDEO
 ENTERTAINMENT, LLC, a California
 19 limited liability company
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff THAT ONE VIDEO ENTERTAINMENT, LLC, a California limited
3 liability company (“TOVE” or “Plaintiff”) hereby respectfully requests, via this
4 **unopposed** *ex parte* application, that the Court briefly continue the trial in this
5 action, and all related deadlines, by no more than ninety (90) days (the
6 “Application”).

7 **I. STATEMENT OF RELEVANT FACTS**

8 This action involves TOVE’s claim to ownership of certain source code
9 possessed by Defendants KOIL CONTENT CREATION PTY LTD., an Australian
10 proprietary limited company doing business as NOPIXEL, and MITCHELLE
11 CLOUT, an individual (collectively, “Defendants”). TOVE filed is operative First
12 Amended Complaint (the “FAC”) on July 7, 2023. Dkt. No. 18. After Defendants’
13 Motion to Dismiss the FAC was denied on February 14, 2024, Defendants filed their
14 Answer on February 26, 2024. Dkt. Nos. 26-27.

15 On March 26, 2024, the Court held a New Case Status Conference. Dkt. No.
16 29. At this conference, the Court set July 16, 2024 as the trial date. *Id.* Counsel for
17 both parties expressed concern about the short timeline, but the Court explained that
18 while it preferred a short timeline it would entertain a request by the parties for a
19 continuance upon a showing of good cause. Declaration of John Begakis (“Begakis
20 Decl.”) at ¶ 5.

21 On March 29, 2024, Defendants served written discovery. Begakis Decl. at ¶
22 6. On April 8, 2024, TOVE also served written discovery, wherein TOVE sought
23 access to the relevant code base. *Id.* at ¶ 7. On or about the same day, TOVE
24 retained an expert to review such code base. *Id.* at ¶ 8; Exhibit “A” hereto.

25 On April 15, 2024, counsel for the parties met and conferred regarding the
26 logistics of Defendants’ production of the code base (i.e., Where was the code base
27 presently being stored? Would a third-party e-discovery provider need to hold the
28 code base in trust? What protective order terms would need to be in place for

1 Plaintiff's expert to review the code base?). *Id.* at ¶ 9. The parties agreed upon such
 2 logistics, which first included the Court's entry of a protective order. *Id.*
 3 Accordingly, on April 15, 2024 (i.e., that same day), Plaintiff filed a draft protective
 4 order, which the Court granted and entered on April 22, 2024. Dkt. Nos. 33, 36.

5 On April 24, 2024, TOVE's counsel attempted to meet and confer in good
 6 faith with Defendants' counsel regarding the Court's rejection of the parties'
 7 proposed Stipulation to continue the Trial. Begakis Decl. at ¶ 10. TOVE's counsel
 8 asked Defendants' counsel to alternatively stipulate to a revised schedule for
 9 disclosing and deposing TOVE's expert. *Id.* Believing he has leverage to game this
 10 litigation, Defendant's counsel refused, and stated that he also intended to not
 11 produce the code at all if this Application was not granted because we now had no
 12 expert to review it and testify about it at trial. *Id.*; see Exhibit "B" hereto.

13 **II. THERE IS GOOD CAUSE FOR A CONTINUANCE**

14 The Court has broad discretion to modify a scheduling order "for good
 15 cause." FRCP 16(b)(4); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609
 16 (9th Cir. 1992); see also Central District Local Rule ("L.R.") 16-9. Good cause
 17 exists to modify a scheduling where it is "impossible for...present counsel to meet
 18 the pretrial schedule." *Underwood v. Knowles*, 2010 WL 3505066, at *1 (E.D. Cal.
 19 Sept. 7, 2010). Here, good cause exists for the following four (4) reasons.

20 ***First***, the case has been at issue for less than two months, and TOVE has not
 21 only been actively conducting discovery, but it has also already retained an expert
 22 witness to review the relevant code base once it is produced. Despite this,
 23 Defendants have still not granted TOVE access to the relevant code base. And
 24 because trial is scheduled for July 16, 2024, it is impossible for TOVE to meet the
 25 pretrial schedule by having its expert review the relevant code base and provide a
 26 written report ninety (90) days before trial, as required by FRCP 26.

27 ///

1 **Second**, Defendants’ counsel has expressly stated his intention to game this
 2 litigation by not producing the relevant code base in discovery unless TOVE is able
 3 to designate an expert witness. This maneuver will deny TOVE of its constitutional
 4 right to a full and fair trial on the merits of its primary claim to ownership of the
 5 relevant code base. It will also necessitate the filing of a Motion to Compel
 6 Discovery, which will just force the Court to push back the Trial at that time.

7 **Third**, TOVE’s requested continuance is modest. Though this case was filed
 8 on April 10, 2023 (Dkt. No. 1), it has only been “at issue” since February 26, 2024
 9 (see Dkt. No. 27) (i.e., less than two months). TOVE is only asking that a mere three
 10 months more be given to the parties between now and trial, so that TOVE’s expert
 11 can review the code base and provide a written report.

12 **Fourth**, TOVE’s request is consistent with the Court’s rationale expressed at
 13 the Initial Status Conference, when counsel for all parties expressed concern about
 14 the short timeline. In response, the Court made it clear that the short timeline would
 15 help motivate the parties to conduct discovery quickly, which absolutely has been
 16 the case. But the Court stated that it would allow the parties to come in to request a
 17 continuance if good cause existed, which TOVE is doing now because such good
 18 cause does presently exist.

19 **III. CONCLUSION**

20 Based on the foregoing, Plaintiff respectfully request that that the Court
 21 briefly continue the trial in this action, and all related deadlines, by no more than
 22 ninety (90) days.

23 DATED: April 24, 2024

ALTVIEW LAW GROUP, LLP

24
 25 By: 

26 JOHN M. BEGAKIS
 27 SHEENA B. TEHRANI
 28 Attorneys for THAT ONE VIDEO
 ENTERTAINMENT, LLC, a California
 limited liability company

DECLARATION OF JOHN BEGAKIS

I, John Begakis, declare and state as follows:

1. I am an attorney duly licensed to practice law in the State of California and before this Court. I am a founding partner at AltView Law Group, LLP and co-counsel for THAT ONE VIDEO ENTERTAINMENT, LLC, a California limited liability company (“TOVE” or “Plaintiff”), the Plaintiff in this action. I hereby submit this Declaration in support of TOVE’s *ex parte* application requesting that the Court briefly continue the trial in action, and all related deadlines, by no more than ninety (90) days (the “Application”). I know all of the following facts of my own personal knowledge and, if called upon and sworn as a witness, could and would competently testify thereto.

2. On or about April 10, 2023, our office commenced this action on behalf of TOVE, by filing the operative Complaint. The gravamen of this dispute is over TOVE’s claim to be the co-owner in certain code developed for Defendants KOIL CONTENT CREATION PTY LTD., an Australian proprietary limited company doing business as NOPIXEL, and MITCHELLE CLOUT, an individual (collectively, “Defendants”) by TOVE’s employee, Daniel Tracey. Accordingly, the dispute in large part comes down to a review of Defendants’ “code base” by an expert, to determine how similar such code base is to Mr. Tracey’s contributions.

3. On July 7, 2023, my office filed TOVE’s operative First Amended Complaint, which Defendants answered on February 26, 2024.

4. On March 18, and 19, 2024, counsel for Defendants and I exchanged Initial Disclosures pursuant to Fed. R. of Civ. P. 26.

5. On March 26, 2024, I attended the New Case Status Conference held by this Court. At that conference, the Court set trial for July 16, 2024. I and Defendants’ counsel expressed concerns about the short timeline. The Court explained the reason for the short timeline but advised that if a continuance was needed, the parties could come in and request one.

1 6. On March 29, 2024, my office was served with Defendants' first set of
2 written discovery requests.

3 7. On April 8, 2024, my office served Defendants' counsel with TOVE's
4 first set of written discovery requests, which seek access to the relevant code base in
5 Defendants' possession.

6 8. On April 8, 2024, TOVE retained the services of an expert, named
7 William Francis, who will be reviewing Defendants' code base to determine what (if
8 any) similarities exist between such code and Mr. Tracey's original contributions
9 thereto. A true and correct copy of Mr. Francis' curriculum vitae is attached hereto as
10 Exhibit "A" and incorporated herein by this reference.

11 9. On April 15, 2024, I telephonically met and conferred with Defendants'
12 counsel regarding the logistics of Defendants' anticipated production of the relevant
13 code base for our expert's review. Among other topics, we discussed: (i) where
14 Defendants were presently storing the relevant code base; (ii) whether a third-party e-
15 discovery provider needed to hold the code base in trust for security purposes; (iii)
16 whether our expert could use certain machine learning (or "AI") software to assist in,
17 and expedite, his review of the code base; and (iv) what protective order terms the
18 parties would need to have in place for Defendants to feel comfortable providing our
19 office and TOVE's expert access to the code base. The parties agreed upon the
20 logistics, including that Defendants would first file and obtain entry of a protective
21 order before granting access to the code base to us and TOVE's expert.

22 10. On April 24, 2024, the very next day after learning that the Court had
23 denied our Stipulation to continue the Trial, I attempted to meet and confer in good
24 faith with Defendants' counsel, Larry Zerner, to resolve the issue of TOVE's inability
25 to designate its expert witness and provide a report without Defendants having even
26 produced the relevant code base yet. I proposed that Mr. Zerner stipulate to a revised
27 schedule for designating TOVE's expert witness that would allow the expert time to
28 review the code base after Defendants produced it, and allow Mr. Zerner time to

1 depose such expert. Believing he had leverage to game the system and deny TOVE a
2 right to present its case in chief through an expert, Mr. Zerner laughed at this and said
3 he would not agree to a revised expert disclosure schedule. I stated that the
4 alternative was for us to file an *ex parte* application, which he said he would not
5 oppose. However, he then indicated that if the Application was unsuccessful, and
6 TOVE could not produce its expert at trial, Defendants would not be producing the
7 code in discovery due to his view that TOVE now had no way to present its case in
8 chief. When I objected to this position, and stated that it would necessitate the filing
9 of a Motion to Compel, Mr. Zerner hung up on me, in violation of professional rules
10 of conduct. He then refused to pick up my call when I tried to call back. A true and
11 correct email of my summary of our “meet and confer” call is attached hereto as
12 Exhibit “B” and incorporated herein by this reference.

13 I declare under penalty of perjury under the laws of the State of California that
14 the foregoing is true and correct, and that this Declaration was executed on April 24,
15 2024, at Los Angeles, California.

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JOHN BEGAKIS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing electronically filed document has been served via a “Notice of Electronic Filing” automatically generated by the CM/ECF System and sent by e-mail to all attorneys in the case who are registered as CM/ECF users and have consented to electronic service pursuant to L.R. 5-3.3.

Dated: April 24, 2024

By: /s/ John Begakis
John M. Begakis

EXHIBIT “A”

William J Francis

Engineering Servant Leader

✉ authorwjf@gmail.com
 ☎ (214) 505-5009
 📍 Dallas, TX
 🔗 <https://bit.ly/3Q6ULMZ>

ABOUT

With a passion for gaming and creative problem solving I have been lucky enough to work on gaming titles with the likes of Nickelodeon, the NBA and most recently Nexon. I am a patented inventor and have over 100 professional publication credits. I have managed teams as large as thirty and projects with multi-million dollar budgets.

EDUCATION

BAS, University of North Texas

PORTFOLIO

Publications: <https://bit.ly/3Q9EqKf>

Games: <https://williamjfrancis.com>

Patent: <https://bit.ly/3dSsbLo>

CERTIFICATIONS

AWS Certified Architect
 AWS Certified Practitioner
 Scrum Certified Product Owner
 SAFe Certified Agilist

VETERAN

United States Army

VOLUNTEER

Chairman, Collin College
 Web & Mobile Curriculum Advisory

Summary

Proven hands-on technology leader in the video game industry experienced building happy, high performing engineering teams.

Success Stories

While at **Nexon** I managed **feature development, tier-3 support** and **live ops** for a **top grossing mobile game**. For over 12 months my team ensured round the clock operations with **zero down time**. By identifying and prioritizing significant tech debt I was directly responsible for moving from quarterly to **monthly releases** and a **> 30% gain in team velocity**.

Consulting with **Nickelodeon** I architected a strangler-pattern for moving **two native-mobile code bases to a single Unity app**. Building a POC that proved out seamless switching between native screens and Unity scenes, the team was able to continue feature development while transitioning tech stacks **without adding headcount**.

Working with two of the biggest players in the **NBA** I was able to assess and **retool engineering processes** on a web-based game that was in serious danger of missing the launch date. By implementing **devops strategies, buy-vs-build analysis**, and some **hands-on development**, the game landed **on time and under-budget**.

Experience

2024 - Present	Infinigods	Director of Engineering
2022 - 2024	Pixelberry Studios	Engineering Manager
2020 - 2022	Raytheon Intel & Space	Principal Digital Strategist
2018 - 2020	EN08	Chief Architect
2017 - 2018	Accenture	Solutions Architecture Mgr
2013 - 2017	Bottle Rocket Studios	Senior Engineering Mgr
2012 - 2013	Timberhorn IT	Mobile Architect
2007 - 2012	IBM's SoftLayer	Lead Systems Engineer
2006 - 2007	Media Cart	Sr Software Engineer
2004 - 2006	NCR	Software Engineer
1997 - 2004	Linx Data Terminals	Technical Support Mgr

Core Competencies

Technology:

Unity 2D, Solar 2D, Box 2D, Android, iOS, C#, C++, Java, Lua, Lambda, ElasticBeanstalk, Dynamo, RDS, S3, Route-53, Cloudfront, SQS, SNS, IoT Gateway, API Gateway, IAM, Cognito, Firebase, Gitlab, Gitflow, Bitrise

Project & Product Management:

Agile Coach, Scrum Master, Roadmaps, Design Thinking, Feature One Pagers, A/B Testing, Analytics, Campaigns, Estimating, Budgeting, P&L

Leadership

Managing Through Managers, Managing ICs, Leading Cross-Functional Teams, Comfortable With C-Suite, Engineering COE, Mentoring

EXHIBIT “B”



John Begakis <john@altviewlawgroup.com>

Intention to File Ex Parte Application

1 message

John Begakis <john@altviewlawgroup.com>

Wed, Apr 24, 2024 at 10:08 AM

To: larry@morrisoncooper.com

Cc: Sheena Tehrani <sheena@altviewlawgroup.com>

Counsel:

This email confirms the contents of our telephone conversation just now. During the call, you informed me that you would not oppose our ex parte application, but that you do not intend to produce your client's code base in discovery unless we can designate an expert witness. You then proceeded to hang up on me, in violation of the rules of professional conduct.

Accordingly, we will inform the Court of both your intention not to oppose and to not comply with our lawful discovery requests, in our request for a continuation of the trial.

Best,
John

John M. Begakis, Esq. | Partner
AltView Law Group, LLP

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Website: www.altviewlawgroup.com/



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